

AMENDED IN ASSEMBLY JUNE 8, 2006  
AMENDED IN ASSEMBLY MARCH 13, 2006  
AMENDED IN ASSEMBLY JUNE 14, 2005  
AMENDED IN ASSEMBLY JUNE 6, 2005  
AMENDED IN SENATE MAY 2, 2005  
AMENDED IN SENATE APRIL 21, 2005

**SENATE BILL**

**No. 440**

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**Introduced by Senator Speier**

February 17, 2005

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An act to ~~add Article 6 (commencing with Section 2899) to Chapter 10 of Part 2 of Division 1 of the Public~~ *amend Section 2980 of the Public Utilities Code*, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as amended, Speier. Telecommunications: ~~mobile data and mobile telephony services: charges for unauthorized services: billing.~~

~~Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service (cellular), broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but a state or local government is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.~~

Existing law authorizes the Public Utilities Commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation, and to require telephone corporations to provide *certain* customer services. Existing law requires a provider of mobile telephony services to provide subscribers with a means by which a subscriber can obtain reasonably current and available information on the subscriber's calling plan or plans and service usage.

~~This bill would require that providers of mobile data service, as defined, or mobile telephony service, as defined, give clear and conspicuous written notice of a subscriber's potential liability for any unauthorized use of the service and the means for a subscriber to notify the service provider in the event of theft or other loss of a mobile data or mobile telephony communications handset or other device. The bill would require that the written disclosure contain a blank space for the customer to initial or sign, to acknowledge having been advised of their potential liability for unauthorized use of the service. The bill would limit a subscriber's liability for unauthorized use to usage occurring prior to notification of the service provider, not to exceed \$50. The bill would prohibit a mobile data or mobile telephony service provider from changing a subscriber's contract in a way that results in higher rates or charges or more restrictive terms or conditions, unless specified conditions are met.~~

*Existing law specifically requires a person, corporation, or billing agent to provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. Existing law establishes a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. Existing law requires the commission to require telephone corporations to provide customer service to telecommunication customers that includes, among other things, information concerning the regulatory process and how customers can participate in that process, including the process of resolving complaints.*

*This bill would establish specified ways for a subscriber to establish that a dialed call was not authorized. The bill would prohibit a billing*

telephone company, while a complaint investigation is pending, from requiring the subscriber to pay the disputed charge or any associated late charges or penalties, sending the disputed charge to collection, or making an adverse credit report based on nonpayment of the disputed charge. The bill would require a person, telephone corporation, or billing agent that provides a bill for telecommunications services to include with each bill a statement of the subscriber's rights if billed for unauthorized charges, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2890 of the Public Utilities Code is  
2     amended to read:

3     2890. (a) A telephone bill may only contain charges for  
4     products or services, the purchase of which the subscriber has  
5     authorized.

6     (b) When a person or corporation obtains a written order for a  
7     product or service, the written order shall be a separate document  
8     from any solicitation material. The sole purpose of the document  
9     is to explain the nature and extent of the transaction. Written  
10    orders and written solicitation materials shall be unambiguous,  
11    legible, and in a minimum 10-point type. Written or oral  
12    solicitation materials used to obtain an order for a product or  
13    service shall be in the same language as the written order.  
14    Written orders ~~may~~ shall not be used as entry forms for  
15    sweepstakes, contests, or any other program that offers prizes or  
16    gifts.

17    (c) The commission may only permit a subscriber's local  
18    telephone service to be disconnected for nonpayment of charges  
19    relating to the subscriber's basic local exchange telephone  
20    service, long-distance telephone service within a local access and  
21    transport area (intraLATA), long-distance telephone service  
22    between local access and transport areas (interLATA), and  
23    international telephone service.

24    (d) (1) A billing telephone company shall clearly identify, and  
25    use a separate billing section for, each person, corporation, or  
26    billing agent that generates a charge on a subscriber's telephone  
27    bill. A billing telephone company ~~may~~ shall not bill for a person,

1 corporation, or billing agent, unless that person, corporation or  
2 billing agent complies with paragraph (2).

3 (2) Any person, corporation, or billing agent that charges  
4 subscribers for products or services on a telephone bill shall do  
5 all of the following:

6 (A) Include, or cause to be included, in the telephone bill the  
7 amount being charged for each product or service, including any  
8 taxes or surcharges, and a clear and concise description of the  
9 service, product, or other offering for which a charge has been  
10 imposed.

11 (B) Include, or cause to be included, for each entity that  
12 charges for a product or service, information with regard to how  
13 to resolve any dispute about that charge, including the name of  
14 the party responsible for generating the charge and a toll-free  
15 telephone number or other no cost means of contacting the entity  
16 responsible for resolving disputes regarding the charge and a  
17 description of the manner in which a dispute regarding the charge  
18 may be addressed. Each telephone bill shall include the  
19 appropriate telephone number of the commission that a  
20 subscriber may use to register a complaint.

21 (C) Establish, maintain, and staff a toll-free telephone number  
22 to respond to questions or disputes about its charges and to  
23 provide the appropriate addresses to which written questions or  
24 complaints may be sent. The person, corporation, or billing agent  
25 that generates a charge may also contract with a third party,  
26 including, but not limited to, the billing telephone corporation, to  
27 provide that service on behalf of the person, corporation, or  
28 billing agent.

29 (D) (i) Provide a means for expeditiously resolving subscriber  
30 disputes over charges for a product or service, the purchase of  
31 which was not authorized by the subscriber. ~~In~~

32 (e) (1) *In* the case of a dispute, there is a rebuttable  
33 presumption that an unverified charge for a product or service  
34 was not authorized by the subscriber and that the subscriber is  
35 not responsible for that charge. ~~With~~

36 (2) *With* regard to direct dialed telecommunications services,  
37 evidence that a call was dialed is prima facie evidence of  
38 authorization. ~~If~~ *A subscriber may establish that a dialed call*  
39 *was not authorized with any of the following:*

40 (A) *A record of lack of affirmative user authorization.*

1 (B) A lack of a demonstrated pattern of knowledgeable past  
2 use.

3 (C) Other persuasive evidence of lack of authorization.

4 (3) While a complaint investigation is pending, the billing  
5 telephone company shall not do any of the following:

6 (A) Require the subscriber to pay the disputed charge or any  
7 associated late charges or penalties.

8 (B) Send the disputed charge to collection.

9 (C) Make an adverse credit report based on nonpayment of the  
10 disputed charge.

11 (f) If recurring charges arise from the use of those  
12 subscriber-initiated services, the recurring charges are subject to  
13 this section.

14 (e)

15 (g) If an entity responsible for generating a charge on a  
16 telephone bill receives a complaint from a subscriber that the  
17 subscriber did not authorize the purchase of the product or  
18 service associated with that charge, the entity, not later than 30  
19 days from the date on which the complaint is received, shall  
20 verify the subscriber's authorization of that charge or undertake  
21 to resolve the billing dispute to the subscriber's satisfaction.

22 ~~(f) For purposes of this section, "billing agent" is the~~  
23 ~~clearinghouse or billing aggregator.~~

24 ~~(g) This section shall become operative on July 1, 2001.~~

25 (h) A person, corporation, or billing agent that provides a bill  
26 for telecommunications services shall provide with each bill a  
27 clear and conspicuous statement of a subscriber's rights if billed  
28 for unauthorized charges, conforming to the following statement:

29 **"SUMMARY OF YOUR BILLING ERROR RIGHTS IN**  
30 **CASE OF ERRORS (UNAUTHORIZED CHARGES) OR**  
31 **QUESTIONS ABOUT YOUR BILL**

32 *If you think any charge on your bill is wrong, or if you need*  
33 *more information about a transaction on your bill, call us at [toll*  
34 *free number] [the toll free number shown on your bill] or write*  
35 *us [on a separate sheet] as soon as possible at:*

36 *[address] [the address shown on your bill.]*

37 *In your telephone call or letter, give us all of the following*  
38 *information:*

39 (1) *Your name and account number.*

40 (2) *The dollar amount of the suspected error.*

1 (3) A description of the error. Explain, if you can, why you  
2 believe there is an error.

3 (4) If you need more information, describe the item you are  
4 unsure about.

5 **You do not have to pay the amount in question or any**  
6 **penalties or late charges connected to that amount while an**  
7 **investigation is pending, but you are still obligated to pay the**  
8 **parts of your bill that are not in question.**

9 While an investigation is pending, we cannot make a negative  
10 credit report based on nonpayment of the disputed charge or take  
11 any action to collect the amount you question.

12 We will advise you of the results of our investigation within 30  
13 days of the date on which the complaint is received.

14 **If you call us, and we are unable to resolve your question, it**  
15 **is advisable to follow up by writing to us and keeping a copy of**  
16 **that correspondence.**

17 If you are dissatisfied with our response, you may also file a  
18 complaint with the Public Utilities Commission by calling or  
19 writing to the Public Utilities Commission at:

20 [name, address, and telephone number of the Public Utilities  
21 Commission][the address and number shown on your bill.]

22 You may also file a complaint with the Federal  
23 Communications Commission by writing the Federal  
24 Communications Commission at:

25 [name and address]

26 You may have other legal rights in addition to the rights  
27 explained here.”

28 (i) As used in this section:

29 (1) “Billing agent” means the clearinghouse or billing  
30 aggregator.

31 (2) “Unauthorized charges” include charges incurred using a  
32 lost or stolen telecommunications device.

33 ~~SECTION 1. Article 6 (commencing with Section 2899) is~~  
34 ~~added to Chapter 10 of Part 2 of Division 1 of the Public Utilities~~  
35 ~~Code, to read:~~

36  
37 ~~Article 6. Mobile Data and Mobile Telephony Services~~

38  
39 ~~2899. For purposes of this article, the following terms have~~  
40 ~~the following meanings:~~

1     ~~(a) “Mobile data service” means the delivery of nonvoice~~  
2 ~~information to a mobile device and includes nonvoice~~  
3 ~~information communicated to a mobile telephony services~~  
4 ~~handset, nonvoice information communicated to handheld~~  
5 ~~personal digital assistant (PDA) devices and laptop computers,~~  
6 ~~and paging carriers offering services on pagers and two-way~~  
7 ~~messaging devices.~~

8     ~~(b) “Mobile telephony service” means commercially available~~  
9 ~~interconnected mobile phone services that provide access to the~~  
10 ~~public switched telephone network (PSTN) via mobile~~  
11 ~~communication devices employing radiowave technology to~~  
12 ~~transmit calls, including cellular radiotelephone, broadband~~  
13 ~~Personal Communications Services (PCS), and digital~~  
14 ~~Specialized Mobile Radio (SMR). “Mobile telephony services”~~  
15 ~~does not include mobile satellite services or mobile data services~~  
16 ~~used exclusively for the delivery of nonvoice information to a~~  
17 ~~mobile device.~~

18     ~~(c) “Subscriber” means any individual or small commercial~~  
19 ~~entity that purchases or subscribes, or may potentially purchase~~  
20 ~~or subscribe, to any product or service provided or billed by a~~  
21 ~~mobile data service or mobile telephony service provider.~~

22     ~~2899.1. (a) Every mobile data service or mobile telephony~~  
23 ~~service provider shall give clear and conspicuous written notice~~  
24 ~~of a subscriber’s potential liability for any unauthorized use of~~  
25 ~~the service and the means for a subscriber to notify the service~~  
26 ~~provider in the event of theft or other loss of a mobile data or~~  
27 ~~mobile telephony communications handset or other device.~~

28     ~~(b) The written disclosure required by subdivision (a), shall~~  
29 ~~contain a blank space for the customer to initial or sign, to~~  
30 ~~acknowledge having been advised of their potential liability for~~  
31 ~~unauthorized use of the service.~~

32     ~~(c) A subscriber’s liability for unauthorized use is limited to~~  
33 ~~usage occurring prior to notification of the service provider,~~  
34 ~~consistent with the written notice. In no event shall a subscriber’s~~  
35 ~~liability exceed fifty dollars (\$50).~~

36     ~~(d) (1) In any action brought by a mobile data service or~~  
37 ~~mobile telephony service provider, the service provider has the~~  
38 ~~burden of proof to establish that use of the service was~~  
39 ~~authorized.~~

1     ~~(2) In any action brought by a mobile data service or mobile~~  
2     ~~telephony service provider, to recover for services that were~~  
3     ~~unauthorized, the service provider has the burden of proof to~~  
4     ~~establish that the subscriber is responsible for the charges under~~  
5     ~~the agreement.~~

6     ~~2899.2. (a) No mobile data or mobile telephony service~~  
7     ~~provider shall change a subscriber's contract in a way that results~~  
8     ~~in higher rates or charges or more restrictive terms or conditions;~~  
9     ~~unless all of the following conditions are met:~~

10    ~~(1) The change is permitted by law.~~

11    ~~(2) The subscriber is provided with at least 30 calendar days~~  
12    ~~prior written notice before the effective date of the change,~~  
13    ~~during which time the subscriber may terminate service before~~  
14    ~~the effective date of the change. The written notice shall include~~  
15    ~~the following statement in at least 12-point bold face type: "The~~  
16    ~~terms of your contract have changed." Following this heading~~  
17    ~~shall be a clear, concise, and conspicuous statement explaining~~  
18    ~~the change in the rate, charge, term, or condition in the~~  
19    ~~subscriber's contract.~~

20    ~~(3) If the subscriber's contract contains any early termination~~  
21    ~~fee or charge provision, any early termination fee or charge is~~  
22    ~~waived and may not be collected by the service provider if the~~  
23    ~~subscriber elects to terminate service pursuant to paragraph (2).~~  
24    ~~If the subscriber's contract contains any early termination fee or~~  
25    ~~charge, the prior written notice shall, in addition to the notice~~  
26    ~~required in paragraph (2), include the following statement in at~~  
27    ~~least 12-point bold face type: "You have a right to terminate~~  
28    ~~service without penalty." Following this heading shall be a clear,~~  
29    ~~concise, and conspicuous statement explaining the number of~~  
30    ~~days that the subscriber has to terminate service without~~  
31    ~~incurring a fee or charge.~~

32    ~~(b) The requirements of subdivision (a) do not apply to either~~  
33    ~~of the following:~~

34    ~~(1) When the subscriber initiates the request to change the~~  
35    ~~terms or conditions of the contract, including a request for~~  
36    ~~additional services not offered under the existing contract.~~



1     ~~(2) An increase in a tax or fee that the mobile data or mobile~~  
2     ~~telephony service provider is required to collect from the~~  
3     ~~subscriber and remit to a governmental entity.~~

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